

Date: **June 26, 2007**

To: **Chairman Paul Condino**
Members of the House Judiciary Committee

From: **Judge Harvey J. Hoffman, Chairman**
Michigan Association of Drug Court Professionals Legislation Committee

Re: **HB 4920 and HB 4921**

I am unfortunately required to be on the bench this morning and unable to be present with my many good friends and colleagues on the House Judiciary Committee. I am thankful to Representative Jones for offering me the opportunity to submit this letter for the panel's consideration. I am hopeful that in the near future I will be able to be present in person to discuss the proposed bills.

There is much to recommend these bills to the Committee. Interlocks are an important tool in the effort to deal with the carnage caused on our highways by repeat and high BAC drunk drivers. I support both the concept of the proposed bills and call for their adoption, with a few amendments.

BAC .15 Issue

The first, much discussed issue is the .15 BAC as the level at which an individual would be deemed to be an "extreme drunk driver". The average blow for drunk driving arrests in Michigan is .16. This would mean that most persons arrested for drunk driving in our state would be deemed "extreme drunk drivers". I am certainly not in a position to discuss what that means politically to the committee members. I will leave that to you.

To put the BAC issue into perspective, we typically look at a high BAC as one of the indicators to be considered as to whether the offender is an alcoholic, and therefore likely to re-offend. A high BAC indicates an elevated tolerance to alcohol. The higher the tolerance, the greater the likelihood that the offender regularly drinks to excess and puts himself and others at risk by driving drunk. The problem is that it is not the only factor to be considered. Most judges that I speak to would feel much more comfortable with using a .18 or .20 BAC as the defining cut off for "extreme drunk drivers." This would give us a better shot of actually hitting the high risk population that we are all after.

It may be possible to fashion a two tiered approach that would include a person with a BAC of .15 combined with other factors (such as a current or prior assessment of alcoholism or alcohol dependence) and a second per se approach for all offenders with a level of .18 or .20.

Interlock Strengths and Weaknesses

I have the pleasure of serving as a member of the National Working Group for the Traffic Injury Research Foundation (TIRF). TIRF is the leading traffic safety research entity in North America. In its most recent publication on interlocks: "Ignition Interlocks: From Research To Practice", TIRF found that while interlocks are on the vehicles, they do a good job in reducing DWI recidivism. TIRF also found that when the devices come off, recidivism rates among program participants eventually return to levels comparable to offenders who did not participate in the interlock programs. The research submitted to the legislature last year by the interlock companies supports this finding.

The problem is that if you are targeting the high BAC and repeat offenders, you are dealing with a highly addicted bunch. Unless you attack the underlying addictions of the offenders, the interlocks provide only a brief period of safety. If we want to look towards a long term solution to this problem, we have to use the interlock period as a time when we apply appropriate treatment, monitoring and accountability to get at the underlying addictions.

The language in the bills is way too weak as it relates to treatment. Far too many courts provide far too little and far too light treatment for these high risk offenders. The

bills need to be amended to beef up the assessment and treatment requirements. An alcoholic offender will require at least a year of demanding programming if we are to have any chance of addressing drinking behavior built up over years or decades. To do less will render this legislation a long term failure.

Costs

The target populations are already paying court costs, treatment expense, testing expense and driver responsibility fees. In the district courts we are seeing ever increasing numbers of persons who have given up. They tend to drive without licenses and insurance, creating a growing dangerous, underclass of drivers on our roadways. By adding the expense of interlocks, we will be increasing the size of that population. New Mexico is the nation's leader in interlock laws. They included in their bill a fund that indigent offenders could use to pay for a portion of their interlock expense. No such provision exists in the current bill, no doubt because of the poor economic condition of the State of Michigan.

We need to include in the bills, language that would regulate the amount to be charged for interlocks based upon the offender's ability to pay. Our goal should be to get as many of these devices on cars of the target populations as possible. The bottom line for the interlock companies should be secondary to the safety of the public.

Not only would putting more people on the road without licenses be a danger to the public, but by feeding a system that defacto allows licenses only to those who can afford them, an equal protection issue is sure to arise challenging the statute itself.

Best Technology

I applaud the language in the bills that allows for the use of emerging technologies. However, significant disparities in technology already exist amongst the interlocks provided by the various interlock companies. A prime example is in the area of anti-circumvention systems. Nationwide there is a definite trend towards devices that actually take a photo of the offender blowing into the interlock. This approach is light years ahead of those devices that use such things as the "hum tone" method to identify who is making the blow. Without this type of hard evidence "a picture is worth a thousand words" technology, I do not see judges or juries significantly buying into the program.

An amendment should be crafted requiring that within three years, all interlocks in the state should be video devices. This would give the companies time to adapt while moving us in the right direction.

Repeat Offenders

There is clearly an issue as to whether offenders with a BAC of .15 are alcoholics and high risk people. No such argument can be made for repeat offenders. These people should not be allowed the interlock/restricted licenses unless they are also in a DWI/Sobriety Court. Michigan leads the nation in DWI/Sobriety Drug Courts. We have spent many years and lots of money building up this system which includes demanding treatment, regular testing for drugs and alcohol, frequent appearances before the court and demanding sanctions and rewards for program behavior. Their record is outstanding for attacking the underlying addictions of these offenders. However, given the less demanding approach taken in some of our other courts, the interlock restricted licenses should, at least at the start, be available only to repeat offenders in our most demanding courts.

Conclusion

I am excited about the prospects for the future of these bills. With the appropriate amendments I believe that we can, and will, create great legislation, that will make our streets safer for many years to come. The talent and experience amongst the Members of the House Judiciary Committee make this an ideal location for the careful, cautious and creative consideration of these bills.

I urge you to call the drug court and DWI/sobriety court judges in your home district to discuss these issues. Working together, we will create some great law.